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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/581,375	11/27/2007	Simon Adriaan Troost	3135-061626	3718

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THE WEBB LAW FIRM, P.C.  
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PITTSBURGH, PA 15222

EXAMINER
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WILLIAMS, STEPHANIE ELAINE

ART UNIT	PAPER NUMBER
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3754

NOTIFICATION DATE	DELIVERY MODE
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09/15/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@webblaw.com

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/581,375	TROOST ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	STEPHANIE E. WILLIAMS	3754	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 June 2011.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 5) ☒ Claim(s) 25-49 is/are pending in the application.
- 5a) Of the above claim(s) 35 and 43-48 is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 25-34, 36-42 and 49 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____.                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____.  | 6) <input type="checkbox"/> Other: ____.                          |

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 25-27,30-32,36-39,41,42,49 are rejected under 35 U.S.C. 102(b) as being anticipated by Stratemeier et al. (2004/0099696).

3. The Stratemeier et al reference discloses a dispensing device having a container (12) for the fluid with a valve (18, Hsiao reference incorporated into Stratemeier et al.) which is placed on the container and has an outlet opening (outlet orifice of 18), the valve (18) adapted to be opened by actuation of an operating element (30), and a flexible tube (38) connected to the outlet opening for dispensing the fluid, wherein the dispensing device is adapted to contain a fluid (pg.1, para.0001, lines 2-6) suitable for human or animal consumption (in order to intentionally harm someone/something) wherein in a first state (fig.1) a distal part (46,48) of the flexible tube (38) is encased by enclosing means (44) for enclosing the distal tube part, in a second state (fig. 2) the distal part (46,48) of the flexible tube (38) is movable at least partly outside the enclosing means (44), and wherein the operating element (30) is only accessible from outside in the second state (fig.2) of the distal part (46,48) of the flexible tube (38); and wherein the enclosing means includes a chamber (area inside of 44) which is arranged

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on the dispensing device and which is inaccessible in the first state; and wherein part of the enclosing means (44) can be removed from the dispensing device; and wherein the valve (18) is a valve which can be operated by an operative element (30) and that the operative element is only accessible from the outside in the second state (fig.2); and wherein the dispensing device includes a cap (44) which is provided with a cavity (internal area of 44) for receiving the distal tube part in the first state; and wherein the cap (44) is provided with an enclosing element (bottom rim portion of 44) for enclosing the distal tube part in the first state (fig.1); and wherein the tube part (upper end of 38; closes to the valve) connecting to the valve (18) extends transversely of the direction of movement of the valve in both the first state and second state; and wherein in the second state the distal tube part (46,48) extends substantially in line with the tube part connecting to the valve; and wherein the cavity for the distal part of the tube extends adjacently of the operating element (30); and wherein the dispensing device is a bottle (12) and that the valve (18) includes a pump mechanism (which is inside aerosol container that is initiated when push button-30) which can be operated by the operating element (30).

4. Claims 25 -32,38-42,49 are rejected under 35 U.S.C. 102(b) as being anticipated by Yoshizane et al. (GB 2079183A).

5. The Yoshizane et al. reference discloses a dispensing device (figs. 9, 10) consisting of a container (1) for the fluid with a valve (pg.2, col.1, lines 6,7) which is placed on the container and has an outlet opening (opening of 2), the valve adapted to be opened by actuation of an operating element (2), and a flexible tube (3)

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connected to the outlet opening for dispensing the fluid, wherein the dispensing device is adapted to contain a fluid suitable for human or animal consumption (in order to intentionally harm someone/something), wherein in a first state (see fig.9) a distal part (dispensing end of 3) is encased by enclosing means (2<sub>b</sub>,2<sub>d</sub>,5) for enclosing the distal part, in a second state (invisible lines of tube in fig.9) the distal part of the flexible tube is movable at least partly outside the enclosing means, and wherein the operating element (2) is only accessible from outside in the second state of the distal part of the flexible tube (3); and wherein the enclosing means (2<sub>b</sub>,2<sub>d</sub>,5) comprise a chamber (inside of 5) which is arranged on the dispensing device and which is inaccessible in the first state; and wherein the first state the tube (3) includes a bent tube part (bent part of 3; see fig.9), that the bent tube part separates the distal tube part (end tube part of 3) from the tube part (upper end of 3) connected to valve, and that the distal tube part (end tube part of 3) can be move outside the enclosing means (2<sub>b</sub>,2<sub>d</sub>,5) by changing the curvature of the bent tube part; and wherein the bent part (bent part of 3; see fig.9) is adapted to urge the distal tube part (end tube part of 3) outside the enclosing means (2<sub>b</sub>,2<sub>d</sub>,5) by means of resilient force (4); and wherein the tube part (upper end of 3; closes to the valve) connecting to the valve extends transversely of the direction of movement of the valve in both the first state and second state; and wherein in the second state the distal tube part (end tube part of 3) extends substantially in line with the tube part connecting to the valve; and wherein in the second state the distal tube part (end tube part of 3) extends substantially transversely of the tube part (upper end of 3) connecting to the valve; and wherein the dispensing device is a bottle (1) and that the valve includes a

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pump mechanism (which is inside aerosol container that is initiated when push button-2) which can be operated by the operating element (2).

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 34 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stratemeier et al. (2004/0099696) in view of Goncalves (3,955,716).

8. The Stratemeier et al. reference discloses substantially all the structure and functionality of the invention. However the reference lacks the enclosing means form part of the cap and can be broken off the cap.

The Goncalves reference teaches a pressurized container (1) having a cover (10) with an retaining ring (15) that is attached by a peripheral tear strip (16) for the purpose of severing/breaking off the cover from the retaining when container is to be used.

Therefore it would be obvious to one having ordinary skill in the art at the time of the invention to reasonably modify the Stratemeier et al. device by replacing its cap with a cap that has a retaining ring that can be broken off by removing the tear strip as taught by Goncalves in order to provide an easy indication as to whether the pressurized container has been used or not.

9. Claim 33 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stratemeier et al. (2004/0099696) and Yoshizane et al.

Having the enclosing means consisting of a sticker is a design choice base upon the needs of the in consumer and/or manufacturer. Whether the enclosing means consist of a tamper-evident component or a sticker, it does not affect the utility of the invention. Thus, having the enclosing means be a sticker fails to be patentably define over the prior art.

### ***Response to Arguments***

10. Applicant's arguments filed 6/17/2011 have been fully considered but they are not persuasive. Applicant argues that the Yoshizane reference fails to teach or suggest an embodiment where nozzle 3 is completely enclosed by cap 5. Office disagrees. Applicant's claim 25, does not positively recite that the flexible tube/ nozzle had to be completely enclosed. Due to amendment to the claim, Office has chosen embodiment of figures 9 and 10 that discloses the nozzle 3 being in "encased by enclosing means for enclosing the distal tube part" via the recess groove 2<sub>b</sub> of Yoshizane reference. Applicant should note that claims are examined with the elected embodiment in view which can be found in the previous office action. Office stands on the rejections above. The other arguments have been considered but are moot in view of the new ground(s) of rejection.

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11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### ***Conclusion***

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Hsiao (6,260,739; 6,994,275) and Gach (3,262,600) are other various types of dispensing devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to STEPHANIE E. WILLIAMS whose telephone number is (571)272-8059. The examiner can normally be reached on 8:00am-4:30pm.



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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver can be reached on 571-272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. E. W./  
Examiner, Art Unit 3754

/KEVIN P. SHAVER/  
Supervisory Patent Examiner, Art Unit 3754